

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-136-C

In Re:	Office of Regulatory Staff Petition to)	
	Review FCC Mandated Reductions to)	
	Intrastate Access Tariffs)	PROPOSED ORDER
)	GRANTING MOTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) upon the Motion filed by the South Carolina Office of Regulatory Staff (“ORS”) asking the Commission to modify Order No. 2012-479 in the above-captioned action to allow ORS to continue to collect contributions to the South Carolina Interim LEC Fund (“ILF”) and to withhold disbursement of the amount attributed to terminating switched access until such time as the Federal Communications Commission (“FCC”) concludes its investigation into the tariff filings at issue as they relate to ILF, and not later than December 15, 2012.

On May 15, 2012, the South Carolina Telephone Coalition (“SCTC”) filed a Petition in this docket asking the Commission to confirm that revenues received from the ILF are intrastate switched access revenues, and to provide instructions as to the reporting and treatment of such revenues for purposes of implementing the recent order of the FCC regarding intercarrier compensation reform.¹

The Commission issued Order No. 2012-479 on June 20, 2012, finding that ILF revenues are revenues from bulk-billed intrastate switched access service and, therefore, that ILF should be treated

¹ *Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; and FCC 11-161, rel. Nov. 18, 2011 (“*USF-ICC Reform Order*”).

as tariffed switched access for purposes of determining participating local exchange carriers' Eligible Recovery amount in transitioning to the federal recovery mechanism. The Commission directed those LECs who receive funding from ILF to make the appropriate filings, including supporting documentation, to reflect reductions in the rates for intrastate switched access in accordance with the FCC's *USF-ICC Reform Order*. The Commission further directed the ORS, as Administrator of the ILF, to "use reasonable methodologies and procedures, consistent with the FCC's *USF-ICC Reform Order*, to calculate and to transition the terminating switched access portion of the ILF for each participating LEC into the federal recovery mechanism, and to make appropriate adjustments to the ILF to account for such transition."²

On or around June 18, 2012, SCTC members filed interstate access tariffs and backup information in compliance with orders of the FCC implementing universal service and intercarrier compensation reform.³ In accordance with Commission Order No. 2012-479, the interstate access tariffs and backup information filed with the FCC included Interim LEC Fund revenues in the companies' Eligible Recovery amounts and, therefore, in their calculation of the tariffed Access Recovery Charge ("ARC") implemented by the companies.

On July 2, 2012, the Acting Chief of the Wireline Competition Bureau, by delegated authority, issued an order suspending for one day the ARC rates contained in the 2012 annual access tariffs of all issuing carriers that are charging an ARC, and instituting an investigation of the tariffs.⁴ The order directed all issuing carriers charging an ARC to keep an accurate account of all amounts received that are associated with the rates subject to the investigation.⁵ The Wireline Competition Bureau Chief

² Order No. 2012-479 at p. 9, Findings and Conclusions ¶ 5.

³ See *USF-ICC Reform Order*; see also *In the Matter of Material to be Filed in Support of 2012 Annual Access Tariff Filings*, WCB/Pricing File No. 12-08, DA 12-482 (Wireline Comp. Bur., rel. Mar. 28, 2012) (Scheduling Order) and DA 12-575 (Wireline Comp. Bur., rel. Apr. 19, 2012) (Tariff Review Plan Order).

⁴ *In the Matter of July 3, 2012 Annual Access Charge Tariff Filings*, Order, DA 12-1037, WCB/Pricing No. 12-09 (rel. July 2, 2012) ("*Suspension Order*").

⁵ *Id.* at ¶ 12.

subsequently issued an Order on Reconsideration, in which it reconsidered its decision to suspend and investigate the ARC rates contained in the annual access tariffs filed by certain carriers, including CenturyLink, Frontier Communications, and Windstream Communications.⁶ The Bureau concluded that those carriers had either correctly calculated their Fiscal Year 2011 revenues and their Eligible Recovery amounts in their initial tariff filings or had corrected such calculations in subsequent amendments to their tariff filings.⁷

At this time, the scope of the FCC's investigation is not clear. However, the FCC indicated that it would be reviewing the manner in which carriers calculated their Eligible Recovery amounts.⁸ The FCC will issue a designation order identifying the specific issues that will be the subject of the investigation, which "may include, but not be limited to," the issues identified in the *Suspension Order*.⁹

We have previously ruled that ILF revenues constitute intrastate switched access revenues in South Carolina and that such revenues are appropriately included in the federal recovery mechanism. However, in light of the tariff suspension and investigation, we believe it would be prudent to modify our Order No. 2012-479 until such time as the FCC's tariff investigation is concluded, or the scope narrowed, and the federal recovery mechanism is finalized. We therefore modify Order No. 2012-479 to direct ORS to continue to collect contributions to ILF, including the portion attributable to terminating switched access, and allow ORS to withhold terminating switched access funds from distribution until such time as the FCC concludes its investigation, but not later than December 15,

⁶ *In the Matter of July 3, 2012 Annual Access Charge Tariff Filings*, Order, DA 12-1231, WCB/Pricing No. 12-09 (rel. August 1, 2012) ("*Order on Reconsideration*").

⁷ *Id.* at ¶ 4.

⁸ *See id.* at ¶¶ 5-7.

⁹ *Id.* at ¶ 8.

2012.¹⁰ It is anticipated that funds will start flowing from the Connect America Fund (“CAF”) in August of 2012. Allowing ORS to continue to collect contributions to the ILF, but to withhold distribution to the LECs of the dollar amount attributed to terminating switched access, will help prevent any possible double recovery from the ILF and CAF. The withheld distribution amount should be retained by ORS until the FCC completes its investigation as it relates to ILF, but not later than December 15, 2012. ORS may, as ILF fund administrator and at its discretion, determine the manner in which those funds are returned, credited or disbursed to the appropriate persons.

FINDINGS AND CONCLUSIONS

1. We previously concluded in Order No. 2012-479 that ILF should be treated as tariffed intrastate switched access for purposes of determining participating LECs’ Eligible Recovery amount in transitioning to the federal recovery mechanism.

2. On or around June 18, 2012, SCTC members filed interstate access tariffs and backup information in compliance with orders of the FCC implementing universal service and intercarrier compensation reform. In accordance with Commission Order No. 2012-479, the interstate access tariffs and backup information filed with the FCC included Interim LEC Fund revenues in the companies’ Eligible Recovery amounts and, therefore, in their calculation of the tariffed ARC implemented by the companies.

3. On July 2, 2012, the Acting Chief of the Wireline Competition Bureau, by delegated authority, issued an order suspending for one day the ARC rates contained in the 2012 annual access tariffs of all issuing carriers that are charging an ARC, and instituting an investigation of the tariffs. It is anticipated that the FCC’s investigation will be concluded by December 3, 2012.

¹⁰ It is anticipated that the FCC’s investigation will be concluded by December 3, 2012. *See* 47 U.S.C. § 204(a)(2)(A) (tariff investigations must be concluded within 5 months after the date that the charge, classification, regulation, or practice subject to the investigation becomes effective).

4. It is anticipated that funds will start flowing from the CAF in August of 2012. Allowing ORS to continue to collect contributions to the ILF, but to withhold distribution to the LECs of the dollar amount attributed to terminating switched access, will help prevent any possible double recovery from the ILF and CAF.

5. The withheld distribution amount should be retained by ORS until the FCC completes its investigation as it relates to ILF, but not later than December 15, 2012. ORS may, as ILF fund administrator and at its discretion, determine the manner in which those funds are returned, credited or disbursed to the appropriate persons.

IT IS THEREFORE ORDERED THAT:

Order No. 2012-479 is hereby modified to allow ORS to continue to collect ILF contributions and withhold disbursement of the amount attributed to terminating switched access until the FCC concludes its investigation as it relates to ILF, and not later than December 15, 2012. ORS, as ILF fund administrator, is granted the flexibility to determine the manner in which contributed funds are returned, credited or disbursed to the appropriate persons

BY ORDER OF THE COMMISSION:

David A. Wright, Chairman

ATTEST:

Randy Mitchell, Vice Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2012-136-C

IN RE: Petition of the Office of Regulatory Staff for a)
 Proceeding to Timely Review FCC Mandated)
 Reductions to Intrastate Access Tariffs) **CERTIFICATE OF SERVICE**

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **MOTION AND PROPOSED ORDER** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

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Pamela J. McMullan

August 22, 2012
Columbia, South Carolina